IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4109 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHARDABEN DAHYABHAI VANKAR

Versus

COLLECTOR

Appearance:

1. Special Civil Application No. 4109 of 2004

MR JV JAPEE for Petitioner No. 1

Mr. KD Pandya, AGP for Respondent No. 1-2

DS AFF.NOT FILED (N) for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/08/2004

ORAL JUDGEMENT

Rule. Shri KD Pandya, learned AGP waives service of Rule on behalf of respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Collector dated 21st January 2004 and the decision of the State Government dated 11th February 2004 rejecting the representation of the petitioner for permanent allotment of the Government waste land for cultivation.

3. Shri Japee, learned advocate appearing on behalf of the petitioner has submitted that apart from the merits of the case, the State Government was directed to consider the representation of the petitioner looking to the entire facts and circumstances of the case and after giving adequate opportunity of hearing to the petitioner and still the decision is communicated by the Collector and that too no reasons are assigned. He has further submitted from the bare reading of the communication of the Collector that it does not borne out whether what are the reasons for not accepting the application of the petitioner for allotment of the Government land and whether the representation of the petitioner in its true spirit has been considered or not. He has further submitted that in fact the petitioner and his family members are in dire need of the land for their livelihood and therefore requested to allow the present Special Civil Application.

4. In response to the notice issued by this Court, affidavit-in-reply is filed on behalf of the State Government, more particularly by the Collector in which they have justified the decision taken by the State Government. Number of submissions have been made in the affidavit-in-reply on merits to the effect that the petitioner is not entitled to regularisation and allotment of land in question as husband of the petitioner is a Class-IV Government servant and he is earning Rs. 5,958/= per month and at present in fact there is no area of land from the land in question which can be allotted to the petitioner and therefore requested to dismiss the present Special Civil Application.

5. Considering the direction issued by this Court in order dated 1.9.2003 in Special Civil Application No. 12748 of 2003, this Court proposes to dispose of the Special Civil Application by remanding the matter to the State Government for deciding the representation submitted by the petitioner afresh and after giving an opportunity to the petitioner without going into the merits of the case.

6. As per the direction issued by this Court in

order dated 1.9.2003 in Special Civil Application No. 12748 of 2003, the State Government was required to take a decision after giving an opportunity of hearing to the petitioner and to consider the representation afresh looking to the entire facts and circumstances of the case. From the bare reading of the communication of the Collector informing the petitioner that the State Government has rejected the proposal, it is clear that no opportunity of hearing was given to the petitioner by the State Government. Nothing is on record to show what has weighed with the State Government in rejecting the representation of the petitioner. The communication/order passed by the Collector is a non-speaking and non-reasoned order. Under the circumstances, the impugned communication dated 21st January 2004 issued by the Collector and the decision taken of the State Government dated 11th February 2004 rejecting the representation of the petitioner for allotment of the land in question are hereby quashed and set aside. The matter is remanded to the State Government for deciding afresh the representation which is submitted by the petitioner and the State Government is directed to decide and dispose of the representation of the petitioner for allotment of land in question afresh after giving opportunity of hearing to the petitioner by passing a speaking order within a period of three months from the date of receipt of this order.

7. Rule is made absolute to the aforesaid extent. Direct service is permitted.

rmr. [M.R. Shah, J.]